

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

WAYNE A. McCLAIN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 4:11CV1835 TIA
	)	
MICHAEL J. ASTRUE,	)	
COMMISSIONER OF SOCIAL SECURITY,	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER**

This matter is before the Court, sua sponte, upon review of the file. The parties consented to the jurisdiction of the undersigned pursuant to 28 U.S.C. § 636(c).

This cause is on appeal from an adverse ruling by the Social Security Administration. Plaintiff is proceeding in this cause without the assistance of retained counsel. Plaintiff's Complaint was filed on October 20, 2011. (ECF No. 1). On November 4, 2011, the Court entered a Case Management Order setting out the briefing schedule to be followed in this cause in accordance with Rule 9.02 of the Local Rules of this Court.<sup>1</sup> (ECF No. 5).

Defendant Commissioner of Social Security timely filed his Answer to Plaintiff's

---

<sup>1</sup>Local Rule 9.02 provides:

[T]he Commissioner shall file any motion to dismiss, motion to remand, and/or answer within sixty (60) days of service of the complaint. ... The plaintiff shall, unless otherwise ordered by the court, serve and file a brief in support of the complaint within thirty (30) days after the Commissioner's service of an answer and the administrative transcript. The Commissioner shall serve and file a brief in support of the answer within thirty (30) days after service of the plaintiff's brief. Plaintiff shall have ten (10) days after service of the Commissioner's brief to file a reply brief.

Complaint on January 6, 2012. (ECF No. 13). On October 4, 2012, the undersigned entered an Order directing Plaintiff to inform the Court, in writing, whether he intends to pursue his claims based solely on the allegations made in his Complaint, or whether he wishes to pursue his claims by way of a separate Brief in Support of Complaint. The record shows that Plaintiff failed to comply with the Order by filing with the Court a pleading stating whether he intends to pursue his claims based solely on the allegations made in his Complaint, or whether he wishes to pursue his claims by way of a separate Brief in Support of Complaint. Accordingly,

**IT IS HEREBY ORDERED** that no later than November 26, 2012, Plaintiff shall either file a brief in support of his Complaint or a pleading stating that he intends to pursue his claims based solely on the allegations set forth in his Complaint. In the event Plaintiff wishes to pursue his claims by way of a separate Brief in Support of Complaint, Plaintiff shall set forth therein the specific bases upon which he claims the Commissioner to have erred in the determination to deny his benefits.

**IT IS FURTHER ORDERED** that if Plaintiff fails to comply with this Order, this case will be dismissed without prejudice for failure to prosecute and failure to comply with the Orders of the Court.

Dated this 24th day of October, 2012.

/s/Terry I. Adelman  
UNITED STATES MAGISTRATE JUDGE